

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

The Diocese of Buffalo, N.Y.

Debtor.

Chapter 11

Case No. 20-10322 (CLB)

**WAUSAU’S RESPONSE TO THE DIOCESE’S MOTION FOR AN ORDER
APPROVING MEDIATOR FEE AGREEMENT PURSUANT TO
SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE**

Employers Insurance Company of Wausau (formerly known as Employers Insurance of Wausau A Mutual Company formerly known as Employers Mutual Liability Insurance Company of Wisconsin) and Wausau Underwriters Insurance Company (jointly “Wausau”), as defendants in the adversary proceeding related to this Chapter 11 case that was commenced under adversary proceeding number 20-01009 (the “First Adversary Proceeding”), hereby responds and objects in part to the motion by the The Diocese of Buffalo, N.Y.’s (the “Diocese”) seeking entry of an Order approving the Mediator Fee Agreement for the Honorable Patrick H. NeMoyer.

Be advised that Wausau does not object to the fees and expenses proposed by Justice NeMoyer. Rather, Wausau objects to the allocation of such fees and expenses proposed by the Diocese and seeks clarity in the Diocese’s proposed order as to the rights of the “Reimbursement Defendants” to add or removal parties from the initial group of “Reimbursement Defendants.” The Diocese’s proposal requires that one-half of the fees and expenses to be reimbursed among the defendants in the First Adversary Proceeding, which are identified in “Schedule 1” annexed to the Diocese’s motion. “Schedule 1” separates and identifies Wausau as two separate entities responsible for reimbursement, notwithstanding the fact they are merely separate writing companies all under the same umbrella who are represented by the same counsel in this proceeding and, without exception, have been treated by all parties as the same entities throughout the course

of this litigation. For this reason, Wausau proposes an “Amended Schedule 1,” which is annexed to this response, to reflect that Wausau will be treated as a single entity for purposes of reimbursement of Justice NeMoyer’s proposed fees and expenses, thus changing all the allocated reimbursement amounts for the “Reimbursement Defendants” from 12.5% to 14.29% of the one-half of Justice NeMoyer’s fees for which the “Reimbursement Defendants” are responsible.

In addition, the Diocese’s motion does not take into account the numerous insurer-defendants in the adversary proceeding filed separately under adversary proceeding number 21-01001. Though Wausau is not requesting their addition as “Reimbursement Defendants” at this time, it would like the Court’s Order to reflect that not only the Diocese, but all “Reimbursement Defendants,” may file additional motions to add or remove parties from the initial group of “Reimbursement Defendants.” As such, Wausau submits as Exhibit A, a revised Proposed Order Approving Mediation Confidentiality and Fee Agreement Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code, which reflects, in red-lined format, the proposed changes requested by Wausau in this response.

Dated: Buffalo, New York
March 21, 2023

Respectfully submitted,
GOLDBERG SEGALLA LLP

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